



## **ADDITIONAL PROCEDURAL COSTS INCURRED IN CRIMINAL PROCEEDINGS AND THEIR LEGAL NATURE**

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### **ABSTRACT**

The article clarifies the legal nature of the costs listed in general in the form of "other costs incurred in criminal proceedings" without explicitly naming them in the criminal procedure legislation and the types of costs that can be included in them are identified. To do this, the norms of legislation, forensic practice were analyzed, the scientific views of procedural scientists who conducted scientific research on this topic were studied and introduced into scientific observation with them. Also, proposals to improve some provisions of the Criminal Procedure Code of the Republic of Uzbekistan related to procedural costs have been previously requested.

**KEYWORDS:** criminal procedure, legislation, procedural costs, nature of costs, types of costs, participant in the process, protection of individual rights, payment of costs.

Paragraph 8 of Article 318 of the Criminal Procedure Code of the Republic of Uzbekistan states that "other expenses incurred in the course of criminal proceedings shall be included". It is known that this type of expense is vague in its form of legal expression and broad in its legal interpretation. This is because what is included in these costs is not explained in any normative legal document, its legal boundaries are not defined. But according to the position of this institution in the criminal process, the issue cannot be approached in this way. On this basis, clarifying the legal nature of other costs incurred in criminal proceedings is one of the most pressing issues in the field of criminal procedure law. Thus, first of all, since the institute of procedural costs is an institution that regulates financial relations in criminal proceedings, within this institution will be established strict accounting and control of funds spent from the state budget. In turn, if the legal scope of this norm is not clarified, it can become a channel for misappropriation and, if necessary, misappropriation of state budget funds. Second, the use of such a general expression in the Code of Criminal Procedure, adopted on a constitutional basis, has a negative impact on the implementation of the functions of criminal procedure legislation, as well as a violation of the rights and freedoms and legitimate interests of the individual in criminal proceedings.





When studying the experience of foreign countries in the form of expression of this paragraph, in countries where criminal proceedings are regulated by a single code, such as Russia, Ukraine, Belarus, Azerbaijan, Moldova, Kazakhstan, and Armenia, a similar expression of “other costs of criminal proceedings” in our national legislation has been encountered. From this it can be concluded that the types of procedural costs are not fixed and variable, not provided for in the Code of Criminal Procedure, but the legislator may have introduced this norm in order to rely on the legal basis for reimbursement of expenses incurred in criminal proceedings in the form of procedural costs. In particular, according to the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated November 24, 2009 "On the practice of recovery of procedural costs in criminal cases", other costs related to procedural costs are the costs incurred by inquiry, investigative bodies and courts in gathering and verifying the evidence of guilt of a person directly in a criminal case. Other costs may include expenses related to reimbursement of the persons (other than the accused) for the recognition of the separation of the criminal case into a separate proceeding to cover the cost of items damaged or destroyed during the investigative experiment or examination [1].

Russian scientists AV Smirnov, KB Kalinovsky, BT Bezlepkin, V. Lebedev, V. Bojev, VI Radchenko have similar views on this issue, and in their opinion, the other costs of criminal proceedings are the followings:

- a)** expenses that does not cover the costs provided for in the criminal procedure legislation, directly related to the activities of collecting, verifying, and evaluating evidence, that is, compensation, identification, investigative action for the value of damaged or destroyed items (other than the identification of the accused) in the process of conducting an investigative experiment or expert examination, compensation for property damage caused during the search;
- b)** costs associated with the search and presentation of evidence by participants in criminal proceedings, ie the legal representatives of the victim, including a lawyer who provides him with legal assistance on a contractual basis, obtaining extracts from the criminal case file, burial of the exhumed corpse;
- c)** expenses related to the custody of the children of the suspect or accused, as well as the protection of his property. In particular, the transfer of custody of the accused on the basis of a security contract [2].

Another Russian scholar, P. A. Lupinskaya, said that in addition to the above, the costs associated with the state-appointed defense attorney's visit to the place of inquiry, preliminary investigation and trial are also included in the category of other costs incurred in criminal proceedings. In addition, she proposed to include in the type of



procedural costs in the costs of compensation for pecuniary damage to the victim and the damage caused by the illegal actions of the bodies responsible for criminal proceedings [3].

Among the proposals made, the list of additional costs of Russian procedural scholars divided into the above three categories, as well as the costs associated with the opinion of P.A. Lupinskaya's first, that is, the state-appointed defense attorney at the place of inquiry, preliminary investigation and trial may be included in the issue of inclusion in other expenses incurred in the criminal proceedings. But P.A. Lupinskaya's other two proposals are more controversial. In our opinion, the material damage caused to the victim is not related to the criminal proceedings, but to the consequences of the crime committed. Similarly, damage caused as a result of illegal actions of officials responsible for criminal proceedings cannot be assessed as procedural costs, as it was caused by illegal actions in its own name, that is, contrary to the requirements of criminal procedure legislation. According to another procedural scientist, B.K. Nurgazinov, business trip expenses of officials responsible for criminal proceedings i.e., a pre-trial investigation officer, inquiry officer, investigator, and judge including travel, accommodation and daily expenses, depending on the need for investigation and other procedural actions in the course of criminal proceedings puts forward a proposal to include in procedural

These procedural obligations are clearly defined in the norms determining the legal status of participants in criminal proceedings. At the same time, in the process of criminal proceedings, there is a need for the assistance of other citizens whose procedural status is not defined by law. These include assistants who participate in the identification as a person similar to the identifier, owners of items related to what is recognizable, or assistants in conducting investigative actions such as exhuming a corpse, an investigative experiment. In such a situation, it would be logical for them to use the legal status of the attorneys involved in the relevant investigative action. In such a situation, it would be logical for them to use the legal status of the attorneys involved in the relevant investigative action. In such a situation, it would be logical for them to use the legal status of the attorneys involved in the relevant investigative action. In our view, the implementation of this proposal will serve to clarify the additional and probable types of procedural costs that may be encountered in criminal proceedings, and to establish clear criteria for their legal regulation. If we consider this issue in terms of these criteria, there is a need to discuss a number of other reasons that complement a strict list of cost types. In particular, the adoption and implementation of the Law of the Republic of Uzbekistan "On protection of victims, witnesses and other participants in criminal proceedings" defined the mechanisms of



implementation of the institution existing in the criminal procedure legislation (Article 270 of the CPC) [5]. The purpose of this law is to regulate relations in the field of protection of victims, witnesses and other participants in criminal proceedings. On its basis, protection measures provided for in Article 6 of the law shall be taken against a number of participants of the criminal process or persons facilitating the prevention or disclosure of the crime.

It is obvious that the need to apply the provisions of this law arises in the course of criminal proceedings. Defendants are participants in criminal proceedings, and the measures taken to protect them serve the interests of the criminal case, ie the process of proof. In addition, in accordance with Article 26 of the Law, the financing and logistical support of protection measures for protected persons are allocated from the budget and the state bodies providing protection for these purposes. Since the costs associated with the protection of protected persons are borne by other sources not prohibited by law, they can not be borne by these persons. This, in fact, requires that these costs be recognized and reimbursed in law as procedural costs.

At this point, the question may arise as to whether it is appropriate to include in the procedural costs in the costs associated with taking measures to protect participants in criminal proceedings, such as suspects, accused, defendants, convicts. In our view, it would be legitimate and logical to include the costs associated with taking measures to protect these individuals in the category of procedural costs. This is because the safety of the suspect, accused, defendant or their close relatives may be threatened by other criminals or close relatives of the victim who are involved in the criminal case or who have not been exposed during the investigation. Failure to take timely measures to protect against existing threats can lead to failure of participants in criminal proceedings to comply with their procedural obligations and adversely affect the evidentiary process. In addition, it is contrary to the goals, objectives and principles of criminal procedure legislation to limit the protection of the legitimate interests of the victim in the case and to endanger the life, health, property and other interests of the suspect, accused, defendant and their close relatives.

Therefore, it is proposed to include the costs of protection of victims, witnesses and other participants in the criminal proceedings in full in the procedural costs and to include this type of costs in Article 318 of the CPC as a new item in the following wording: "From the costs associated with ensuring the protection of victims, witnesses and other participants in criminal proceedings".

Another of the costs incurred in the practice of litigation is the issue of compensation for property damage caused or destroyed during the investigative actions carried out during the criminal proceedings. This type of material damage can occur mainly in





the process of search, experiment, identification, review, expert examination. Because in carrying out these investigative actions, sometimes citizens have to use their accommodation, things and belongings. For example, during a search operation conducted in search of items and belongings relevant to the case, as well as in connection with the search for an individual in different situations, citizens have to enter residential buildings and other real estate objects and conduct searches to find things and objects there. They can be damaged when using items, objects and other similar material values belonging to individuals and legal entities in the restoration of the original condition during the investigative experiment. During the recognition investigative action, damage may be caused to objects and items used as related objects in the identification of the object. The investigative action may also be necessary for procedural actions related to the objects and things in the premises of citizens' homes, enterprises, organizations and institutions, property.

There is also a possibility of material damage to the objects of inspection belonging to individuals and legal entities during the expert inspection. Although cases of pecuniary damage as above have not been raised as a serious problem in judicial practice, it cannot be concluded that there is no problem with this. This is due to the fact that citizens are not well aware of their rights, do not apply in an appropriate manner, trying to compensate for the material damage caused by the actions of a public official under the influence of a specific oriental concern, at their own expense or in most cases, the damage is related to the property of the suspect, accused, defendant, so they do not raise the issue of compensation, even if they consider themselves the cause of the situation. The study of the experience of foreign countries on this issue revealed that in the criminal procedure legislation of countries such as Azerbaijan, Armenia, Moldova, the examination of the damage recognized as a separate type of procedural costs [6]. In addition, considering that property damage caused during the investigation may arise in the course of criminal proceedings, and that the conduct of the investigation is related to the evidentiary process, the aggrieved party and the injured party perform certain procedural obligations as persons involved in proving, the costs associated with recovering that damage will be borne entirely in accordance with the procedural costs.

Based on the above, it is proposed to include this type of expenditure in Article 318 of the CPC as a new item in the following wording: "From the amount spent to cover the cost of items damaged or destroyed during the experiment, search and other investigative actions ...".

Thus, based on the above and the necessity of criminal proceedings, article 318, paragraph 8 of the CPC "other costs incurred in criminal proceedings" (other costs





associated with the performance of procedural obligations by a participant in criminal proceedings) may be expressed in the following forms:

- 1) Costs incurred payment to their rightful owners in the manner and amount agreed upon for the use or lease, repair, store and transport of items and facilities that are directly related to the activities of collecting, verifying and evaluating evidence, such as those required in the course of an investigative experiment, identification or expert examination and other investigative actions not covered by the institute of procedural costs in criminal procedure law;
- 2) Costs associated with the involvement of citizens assisting in the conduct of investigative actions, such as assistants, exhumation and burial of the corpse, investigative experiment, participating in the identification as a person similar to the identifier;
- 3) Costs associated with identification and presentation of evidence by the participants in the criminal proceedings, i.e. To the representatives of the victim, transfer to the place of procedural actions, obtain extracts from criminal case materials of a lawyer who provides legal assistance to him on a contractual basis, as well as a lawyer appointed at the expense of the state to provide legal assistance to the suspect, accused and defendant;
- 4) Costs associated with placing unaccompanied and needy minor children, elderly parents, other dependent relatives of a person detained, arrested or placed in a medical institution for examination under the care of other persons or institutions or taking measures to protect the property or dwelling of the person subject to coercive measures, if they remain unattended;
- 5) Costs associated with the requisition and confiscation of property of the victim and other persons, as well as the destruction of material evidence in the case;
- 6) Costs spent to inform the lawyer or close relative of the suspect, accused, defendant about his detention and place of detention;
- 7) Payments made by relevant interdepartmental commissions to provide financial incentives to citizens in accordance with the resolution of the cabinet of ministers of the republic of uzbekistan "on approval of the regulation on the procedure for incentives for citizens and public organizations for active participation in crime prevention and fight against crime" [7].
- 8) Payments related to the issuance of a new passport (travel document) instead of a suspended passport (travel document), etc.

The main forms of "other expenses incurred in criminal proceedings" under Article 318, paragraph 8 of the CPC, which may be manifested in criminal proceedings, are described above.





In judicial practice, it may be necessary to cover other types of them as well. In this process, it would be expedient to address this issue from the point of view of the main features listed above, which are specific to procedural costs.

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